

## Nuclear Regulatory Commission

## §2.717

and petitions for review by the Commission pursuant to §2.786. The presiding officer may require such representative to indicate with reasonable specificity, in advance of the hearing, the subject matters on which he desires to participate.

(d) If a matter is taken up by the Commission pursuant to §2.786, a person who is not a party may, in the discretion of the Commission, respectively, be permitted to file a brief "amicus curiae". A person who is not a party and desires to file a brief must submit a motion for leave to do so which identifies the interest of the person and states the reasons why a brief is desirable. Except as otherwise provided by the Commission, such brief must be filed within the time allowed to the party whose position the brief will support. A motion of a person who is not a party to participate in oral argument before the Commission will be granted at the discretion of the Commission.

[27 FR 377, Jan. 13, 1962, as amended at 28 FR 10153, Sept. 17, 1963; 43 FR 17802, Apr. 26, 1978; 56 FR 29408, June 27, 1991; 64 FR 29213, June 1, 1999]

### **§2.715a Consolidation of parties in construction permit or operating license proceedings.**

On motion or on its or his own initiative, the Commission or the presiding officer may order any parties in a proceeding for the issuance of a construction permit or an operating license for a production or utilization facility who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions, to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument. However, it may not order any consolidation that would prejudice the rights of any party. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.

[37 FR 15132, July 28, 1972]

### **§2.716 Consolidation of proceedings.**

On motion and for good cause shown or on its own initiative, the Commission or the presiding officers of each affected proceeding may consolidate for hearing or for other purposes two or more proceedings, or may hold joint hearings with interested States and/or other federal agencies on matters of concurrent jurisdiction, if it is found that such action will be conducive to the proper dispatch of its business and to the ends of justice and will be conducted in accordance with the other provisions of this subpart.

[43 FR 17802, Apr. 26, 1978]

### **§2.717 Commencement and termination of jurisdiction of presiding officer.**

(a) Unless otherwise ordered by the Commission, the jurisdiction of the presiding officer designated to conduct a hearing over the proceeding, including motions and procedural matters, commences when the proceeding commences. If no presiding officer has been designated, the Chief Administrative Law Judge has such jurisdiction or, if he is unavailable, another administrative law judge has such jurisdiction. A proceeding is deemed to commence when a notice of hearing or a notice of proposed action pursuant to §2.105 is issued. When a notice of hearing provides that the presiding officer is to be an administrative law judge, the Chief Administrative Law Judge will designate by order the administrative law judge who is to preside. The presiding officer's jurisdiction in each proceeding will terminate upon the expiration of the period within which the Commission may direct that the record be certified to it for final decision, or when the Commission renders a final decision, or when the presiding officer shall have withdrawn himself from the case upon considering himself disqualified, whichever is earliest.

(b) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, may issue an order and take any otherwise proper administrative action with respect to a licensee who is a party to a pending proceeding. Any order related to the subject matter of

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the pending proceeding may be modified by the presiding officer as appropriate for the purpose of the proceeding.

[28 FR 10153, Sept. 17, 1963; 31 FR 12776, Sept. 30, 1966, as amended at 37 FR 28711, Dec. 29, 1972]

### § 2.718 Power of presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order. He has all powers necessary to those ends, including the powers to:

- (a) Administer oaths and affirmations.
- (b) Issue subpoenas authorized by law.
- (c) Rule on offers of proof, and receive evidence.
- (d) Order depositions to be taken.
- (e) Regulate the course of the hearing and the conduct of the participants.
- (f) Dispose of procedural requests or similar matters.
- (g) Examine witnesses.
- (h) Hold conferences before or during the hearing for settlement, simplification of the issues, or any other proper purpose.
- (i) Certify questions to the Commission for its determination, either in his discretion or on direction of the Commission.
- (j) Reopen a proceeding for the reception of further evidence at any time prior to initial decision.
- (k) Appoint special assistants from the Atomic Safety and Licensing Board Panel pursuant to § 2.722;
- (l) Issue initial decisions; and
- (m) Take any other action consistent with the Act, this chapter, and sections 551–558 of title 5 of the United States Code.

[27 FR 377, Jan. 13, 1962, as amended at 45 FR 62028, Sept. 18, 1980]

### § 2.719 [Reserved]

### § 2.720 Subpoenas.

(a) On application by any party, the designated presiding officer or, if he is not available, the Chairman of the Atomic Safety and Licensing Board Panel, the Chief Administrative Law Judge, or other designated officer will issue subpoenas requiring the attend-

ance and testimony of witnesses or the production of evidence. The officer to whom application is made may require a showing of general relevance of the testimony or evidence sought, and may withhold the subpoena if such a showing is not made, but he shall not attempt to determine the admissibility of evidence.

(b) Every subpoena will bear the name of the Commission, the name and office of the issuing officer and the title of the hearing, and will command the person to whom it is directed to attend and give testimony or produce specified documents or other things at a designated time and place. The subpoena will also advise of the quashing procedure provided in paragraph (f) of this section.

(c) Unless the service of a subpoena is acknowledged on its face by the witness or is served by an officer or employee of the Commission, it shall be served by a person who is not a party to the hearing and is not less than eighteen (18) years of age. Service of a subpoena shall be made by delivery of a copy of the subpoena to the person named in it and tendering him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commission, fees and mileage need not be tendered, and the subpoena may be served by registered mail.

(d) Witnesses summoned by subpoena shall be paid, by the party at whose instance they appear, the fees and mileage paid to witnesses in the district courts of the United States.

(e) The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgment of service with the officer before whom the witness is required to testify or produce evidence or with the Secretary. Failure to make proof of service shall not affect the validity of the service.

(f) On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the presiding officer or, if he is unavailable, the Commission may: (1) Quash or modify the subpoena if it is